IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.690 OF 1998
IN
NOTICE OF MOTION NO.152 OF 1997
IN
SUIT NO.3598 OF 1996

1. Dileep Nevatia
2. Sunita Nevatia
   Both of Bombay, Indian
   Inhabitant, residing at
   Shashi Deep, 5-A, Worli
   Sea Face, Worli,
   Bombay- 400 025. ..Appellants
   (Orig.Defendant Nos.1 and 2)

V/s.

1. Snehlata Nevatia
   of Bombay, Indian Inhabitant
   residing at Shashi Deep, 5-A,
   Worli Sea Face, Worli,
   Bombay- 400 025.

2. Balkrishna Nevatia
   All of Bombay, Indian
   Inhabitant, residing at
   Shashi Deep, 5-A, Worli
   Sea Face, Worli,
   Bombay- 400 025.

3. Jyoti Nevatia
   of Bombay, Indian Inhabitant
   residing at Champagne House,
   2nd floor, Worli Sea Face,
   Bombay- 400 025.

4. Shishir Nevatia,
   of Bombay, Indian Inhabitant
   residing Sunshine Industries,
   Udyog Bhavan, Hind Cycle Lane,
   250-D, Worli, Bombay-400 025. ..Respondents.

(Orig.Plaintiff and Defendant
Nos.3, 4 and 5 respectively.)

Mr. Navin Parikh i/b P.S.Bidwai for the Appellants.

Mr.A.Y.Bookwala with Phiroz Palkhiwala & Mr.Uttam i/b Mulla & Mulla & Craigie Blunt and Caroe for the

Respondent No.1.

Respondent No.3 present.

CORAM: D.K.DESHMUKH &
J.H. BHATIA, JJ.
DATED: 18th July, 2007.

P.C.:

1. The appellants, who are original defendant nos.1 and 2, have preferred this appeal challenging the order of injunction granted by the learned Single Judge against them and in favour of the respondent no.1, who is original plaintiff. For the sake of convenience, the parties shall be referred by their status in the suit.

2. Defendant No.3 Balkrishna is husband of the plaintiff. Defendant no.1 Dileep and defendant no.5 Shishir are the sons and defendant no.4 Jyoti is their daughter. Defendant No.2 Sunita is wife of defendant no.1. The plaintiff claims to be owner of the building known as 'Shashi Deep'. Prior to family arrangement, which allegedly took place on 22nd September, 1990, all the family members were residing in the said house. It appears that in view of certain disputes, the family arrangement was made whereby the defendant nos.3, 4 and 5 left the house while, the defendant nos.1 and 2 were allowed to continue to stay in the said house alongwith

the plaintiff. The plaintiff being sole and exclusive owner is living in the said house. The house consists of ground and first floor and some construction on second floor. According to the plaintiff, she had not agreed to any such family arrangement because she herself is a exclusive owner of the property and she made this fact known to all the defendants by letter dated 15-10-1990. However, in spite of that the defendant nos.1 and 2 continued to live with her in the same house. The defendant nos.1 and 2 also made construction on the second floor by making use of available F.S.I. with permission of the plaintiff. According to her, the defendant nos.1 and 2 had made her living in the house miserable and an attempt was made to corner her in one room of the house at the ground floor while the large house having a carpet area of 10,000 sq. ft. was tried to be exclusively used by the defendant nos.1 and 2 for residence as well as business and official purpose. Therefore, she filed a suit and in the said suit, she took notice of motion seeking several interim reliefs pending the suit including direction to defendant nos. 1 and 2 to quit the ground and first floors of the house.

3. The defendant nos.1 and 2 contested the motion and contended that as per the family arrangement, they

are entitled to be in occupation of the house alongwith the plaintiff and as per the arrangement, plaintiff has right to use the house during her lifetime and after her death, the defendant no.1 will be the owner of the property. It is also contended that the defendant nos.1 and 2 had also spent an amount of Rs.56 lakhs on renovation of the ground and first floors of the house and in view of this, they could not be asked to quit the house.

4. After hearing the parties, the learned Single Judge noted that the counsel for the defendant no.1 had made statement on his behalf that the defendant no.1 will not use the suit premises for office purpose or any other purpose other than residential and the contest was only in respect of the prayer clause (c) in the motion. The learned Single Judge granted the prayer (c) in the motion but clarified that motion and thereby the defendant nos.1 and 2 were required to quit the ground and first floor and not to make use of the same except the staircase for approach to the second floor, which they had constructed with permission of the plaintiff.

5. Heard the learned counsel for the parties and perused the relevant documents as well as the impugned order passed by the learned Single Judge.

6. There is no dispute that the plaintiff is the sole owner of the property known as 'Shashi Deep' situated at Worli Sea-face. Even though the plaintiff has contended that the family arrangement is not binding on her, it is admitted fact that she is signatory of the family arrangement dated 22nd September, 1990 whether the family arrangement was made with her free consent and whether it is binding on her are the issues, which may be decided at the time of final decision of the suit. Clause (9) of the said family arrangement is relevant for the present appeal. It reads as follows:

> Clause (9) :-
>
> Mrs. Snehalata Nevatia is the sole owner of the property, with all its attendant rights, known as Shashi Deep at Worli Sea Face, and Dileep and his family will not be dispossessed from Shashi Deep premises provided he agrees to pay such amounts for maintenance and taxes **as Mrs.Nevatia deems fit.** The parties agree that Mrs.Snehlata Nevatia can, in her life time or by will, gift anything to Shishir except the existing structure of Shashi Deep. In particular, it is made clear that Mrs.Snehlata Nevatia can, if she wishes, gift the FSI permissible for the second floor to Shishir or his family members."

As per the family arrangement while the defendant nos.3, 4 and 5 were required to vacate the house, the defendant no.1 and 2 were allowed to continue to live in the said

house provided the defendant no.1 agrees to pay the maintenance charges as well as taxes. However, in view of language of Clause (9) their continuation in the house was purely at the discretion of the plaintiff.

7. According to the defendant nos.1 and 2, the defendant no.1 is to become owner of the property after death of the plaintiff and she is entitled to use the same during her lifetime and, therefore, he contended that he cannot be asked to quit the ground and first floors of the house. The learned Single Judge rightly observed that this arrangement will give right to the defendant no.1 in respect of property, only after the death of plaintiff and not during her lifetime. The arrangement does not make the defendant no.1 the owner of property. The learned Single Judge also noted that even if under the family arrangement the defendant no.1 gets right to the property on death of the plaintiff, still there is no threat to that right as the plaintiff had not backed out from the said undertaking.

8. It was contended on behalf of the defendant no.1 that he had spent an amount of Rs.56 lakhs for renovation of the ground and first floors. However, the learned Single Judge noted that there is no reliable material to support this contention and even that will

not give right of exclusive user of the second floor and the common user of the first and ground floors to the defendant no.1. It appears that as per the clause (9) of the family arrangement, the plaintiff could make a gift of the F.S.I. permissible for the second floor to his second son Shishir, who is defendant no.5, but in spite of that she has allowed defendant no.1 to make construction on the second floor by making use of that F.S.I. and she has not disputed the right of defendant no.1 to occupy and use the second floor. It shows that the defendant no.1 and his family members are not being thrown out from Shashi Deep. On the other hand, the defendant nos.1 and 2 were trying to take possession of the whole of the building by restricting user of the plaintiff to one room of the ground floor only. Certainly this could not be acceptable to her. In view of these circumstances, she wanted defendant nos.1 and 2 to quit and vacate the ground and first floors and to restrict their use only to the second floor, which was constructed by the defendant no.1 with her permission. The learned Single Judge noted that usually the Courts do not grant relief of mandatory injunction at an ad-interim or interim stages. However, no provision of law prevents the Court from granting such relief in cases of gross inequality. In the present case, we find that infact such injunction restricting use of the

defendant nos.1 and 2 only to second floor was absolutely necessary, even though the suit is pending.

9. Taking into consideration all the facts and circumstances and particularly the exclusive ownership of the plaintiff over the house and the fact that defendant nos.1 and 2 were living with her in the ground and first floor of the building only with her permission, we find no fault with the impugned order passed by the learned Single Judge.

10. In the result, the appeal stands dismissed.

(D.K.Deshmukh, J.)

(J.H.Bhatia, J.)